In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-20-00006-CR

CAMILLA DEE FRAZIER A/K/A CAMILLA TIDROW, APPELLANT

V.

THE STATE OF TEXAS

On Appeal from the 69th District Court
Hartley County, Texas,
Trial Court No. 1422H, Honorable Ron Enns, Presiding

December 21, 2020

MEMORANDUM OPINION

Before QUINN, CJ., and PIRTLE and DOSS, JJ.

Appellant, Camilla Dee Frazier a/k/a Camilla Tidrow, appeals her conviction for murdering her father. She attacks it through seven issues which involve the trial court's denial of her motion to suppress, admitting evidence from two of the decedent's former girlfriends at her trial, denying her admission of evidence against a State's witness, and in submitting a jury instruction directing the jury to determine if she was guilty as the primary actor, as opposed to only a party. We affirm.

Background

Appellant was charged and tried for the murder of her father. After the jury had been selected but prior to the presentation of evidence, the trial court ruled on appellant's motion to suppress evidence based on a deficient search warrant affidavit issued in July of 2017. According to the motion, the affidavit failed to establish probable cause to support the search warrant. The motion was denied.

During trial, the State presented evidence of the acrimonious relationship between appellant and her father, Joel Frazier. That evidence included two persons who spoke of events occurring a few years before the murder. One such person was Frazier's former girlfriend, Lynne Bowers, and she spoke of a conversation with appellant in September of 2016. Bowers testified that almost a year prior to Frazier's death, she asked appellant how she was doing to which appellant responded "[w]ell, if I had a gun, I would blow my dad's fucking head off." The other person appellant complained about, Jana Like, testified about appellant's discussions of poisoning her father with mercury, and to inflicting harm on him.

The State, subsequently, called a witness to testify by the name of Benjamin Buck. Buck had given a statement to the police regarding Frazier's murder. Appellant wished to admit the recorded statement in its entirety under rules of evidence 107 and 612. The trial court denied the request. Finally, during the charge conference, appellant objected to the inclusion of an instruction allowing the jury to consider whether to convict her of murder as a primary actor; she argued that the evidence was insufficient to support the

submission. The trial court ultimately submitted charges involving her commission of the offense as a primary actor and as a party. The jury then found appellant guilty of murder.

Issues One through Three – Search Warrant Affidavit

In her first three issues, appellant attacked the denial of her motion to suppress. Through them, she argued that the search warrant permitting the search of the decedent's house was illegally issued. Allegedly, 1) the supporting affidavit did not set forth sufficient facts to establish that a specific offense had been committed or that evidence supporting the offense would be found at the location described; 2) the magistrate who issued the search warrant did not have a substantial basis for concluding that probable cause existed, and 3) the magistrate's probable cause determination reflected an improper analysis of the totality of the circumstances. The trial court disagreed and denied the motion. We overrule the issues.

In reviewing the decision, we apply a bifurcated standard; it calls for us to defer to the facts found by the trial court while reviewing its application of law de novo. *Mansoor Abdul Rasool v. State*, No. 07-18-00425-CR, 2020 Tex. App. LEXIS 2992, at *4–5 (Tex. App.—Amarillo Apr. 8, 2020, no pet.) (mem. op., not designated for publication).

Next, to establish probable cause for securing a search warrant, the accompanying affidavit must show: "(1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched." TEX. CODE CRIM. PROC. ANN. art. 18.01(c) (West Supp. 2020); *Mansoor Abdul Rasool*, 2020 Tex. App.

LEXIS 2992, at *5–6 (quoting TEX. CODE CRIM. PROC. ANN art. 18.01(c)). Indeed, probable cause is an amorphous term without a ready definition. As noted by our Court of Criminal Appeals, its meaning often varies like "beauty in the eye of the beholder." *Rodriguez v. State*, 232 S.W.3d 55, 60 (Tex. Crim. App. 2007). It is a flexible and nondemanding standard with a touchstone of fair probability and the presence of a substantial basis for the issuance of the warrant. *Id.* So, it exists when, under the totality of the circumstances depicted in the four corners of the affidavit underlying the warrant, there arises a fair probability that a crime occurred and evidence of it will be found at a specified location. *Mansoor Abdul Rasool,* 2020 Tex. App. LEXIS 2992, at *6. And, in determining whether that standard was met in a particular case, we both construe the affidavit in a commonsense, realistic manner and permit its reader to draw reasonable inferences from its content. *Id.*

The affidavit at bar was executed by Corporal Lemley of the Dalhart Police Department. In it, he stated that he sought leave to search for "evidence of the offense of homicide" and believed it existed at the location to be searched. That location consisted of a residence with outbuildings. The circumstances underlying the belief that a homicide had occurred and evidence of same was at the location consisted of 1) the residence and outbuilding being "in the charge" and "controlled by" the decedent, appellant and her husband (Kory Tidrow); 2) the decedent having a second daughter;[1] 3) a draft of the decedent's latest will having been mailed to the residence wherein appellant and Kory lived, as well; 4) appellant gaining knowledge that her sister would inherit all

[1] Evidence was admitted at trial revealing that the intended sole beneficiary under the decedent's will (that is, appellant's sister) actually was not the testator's biological daughter. Because that evidence falls outside the four corners of the affidavit, though, we cannot and do not consider it as part of our analysis.

their father's property under the latest will; 5) the testator (father) disappearing before the will was signed; 6) the decedent last being seen at the residence on July 11, 2017; 7) appellant's sister informing authorities, on July 14, 2017, that their father was missing; 8) local authorities contacting appellant on July 14, 2017 and broaching the topic of her father's disappearance; 9) appellant acknowledging that her father was last seen on July 11th; 10) appellant and her husband Kory leaving for a camping trip shortly after being contacted by the authorities; 11) appellant and her husband taking rural and dirt roads to arrive at their alleged camping destination in Oklahoma; 12) appellant and Kory returning by July 16, 2017; 13) the affiant responding to a report on July 17, 2017 that people were removing items from a barn located at decedent's residence; 14) the affiant travelling to the site and encountering Kory; 15) Kory refusing to provide his last name because allegedly "he had forgotten it"; 16) appellant writing a check for $300, on July 17, 2017, against an account owned by her missing father; 17) tracking dogs indicating that the decedent's scent remained "localized to the residence"; and 18) appellant taking the decedent's cell phone before his disappearance, placing it within the residence, and failing to provide it to the police when they asked for it. Though viewed in isolation, each circumstance may mean little. Together, though, and when coupled with reasonable inferences from them, they paint a picture depicting a "fair possibility" of foul play (i.e., homicide) and evidence of same present in the residence and other locations named in the affidavit.

The picture is one of appellant and her husband living with her father only to discover the prospect of disinheritance; some could call that motive. Before that happenstance occurs by his executing the will, father disappears. Despite living with him

and knowing whether he was there, she says nothing of the disappearance until confronted by the police. Only then she "confirms" that her father was missing. After being contacted by the police, she and Kory take a quick trip to Oklahoma utilizing rural roads, the identity of which she cannot recall. Common sense suggests that unremembered rural roads can serve as convenient and untraceable places to lose items. Returning quickly from the camping trip and despite the continued absence of her father, appellant starts spending his cash. In turn, Kory begins taking items from his father-in-law's barn while attempting to hide his identity from the police as they catch him in the act. So too does appellant just happen to have lost track of the cell phone she took from her father and hid in the house before he disappeared. And, we cannot ignore father's continued presence (i.e., his body) remaining in or near the residence as confirmed by tracking dogs. This may sound like a tale told in a fictional mystery novel; yet, truth is often more strange than fiction. Part of the truth is that the totality of the circumstances is enough for the "magistrate" to find the existence of "a fair possibility" that father was murdered by appellant at the residence for reasons involving avarice and his body remained on site. Thus, the decision to issue the search warrant was and is amply founded.

Issues Four and Five – Appellant's Prior Statements

In her fourth and fifth issues, appellant contends the trial court erred by admitting into evidence "two prior statements made by her to [the decedent]'s former girlfriend" and a "'travel companion'" of appellant's. According to appellant, both statements were too remote in time to have any probative force and were more prejudicial than probative pursuant to Texas Rule of Evidence 403. We overrule the issues.

We review a trial court's decision regarding the admissibility of evidence under an abused discretion standard. *Cameron v. State*, 241 S.W.3d 15, 19 (Tex. Crim. App. 2007). To be a legitimate exercise of discretion, the decision need only fall within the zone of reasonable disagreement, given the record before the court and the applicable law. *Id.* It will also be upheld if under any theory of law applicable to the case. *Ramos v. State*, 245 S.W.3d 410, 417–18 (Tex. Crim. App. 2008).

Next, Rule 403 of the Texas Rules of Evidence permits the exclusion of otherwise relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence." TEX. R. EVID. 403. When undertaking a Rule 403 analysis, a trial court must balance 1) the inherent probative force of the proffered evidence with 2) the proponent's need for that evidence against 3) the tendency of the evidence to suggest a decision on an improper basis, 4) any tendency for confusion or distraction of the jury from the main issues, 5) any tendency for the jury to give undue weight to it, 6) the time the presentation of the evidence will consume, and 7) the redundancy, if any, of the evidence. *See Gigliobianco v. State*, 210 S.W.3d 637, 641–42 (Tex. Crim. App. 2006).

In calling Bowers to testify, the State explained that 1) the witness would discuss statements made by appellant about her father, which statements were made while Bowers and Frazier dated in September of 2016, and 2) the statements were offered under article 38.36 of the Texas Code of Criminal Procedure.[2] Concerning the statements

[2] Per Texas Code of Criminal Procedure article 38.36, "the state or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense." TEX.

of Like, the State explained they too were offered under article 38.36 and were pertinent to showing appellant's conduct towards and relationship with the decedent between 2015 and 2016.

Here, appellant sought exclusion of the statements by both witnesses, alleging that they were too remote in time. However, the Court of Criminal Appeals has approved the admission of evidence describing threats or assaults against the deceased made years before the offense. *See McClure v. State*, 430 S.W.2d 813, 815 (Tex. Crim. App. 1968). So too has this court. *See, e.g.*, *Matthews v. State*, No. 07-01-0147-CR, 2002 Tex. App. LEXIS 6070, at *8–9 (Tex. App.—Amarillo Aug. 20, 2002, no pet.) (not designated for publication) (involving evidence of a seven-year-old assault and holding that it was not too remote for purposes of admission under article 38.36). So too has this court held that article 38.36 does not limit the time period for which such acts may be admissible. *Brock v. State*, 275 S.W.3d 586, 590 n.3 (Tex. App.—Amarillo 2008, pet. ref'd). Thus, the evidence in question was not inadmissible simply because it occurred as early as 2015.

As for other 403 factors, the evidence was relevant. It depicted appellant's hostility or ill will toward Frazier and was circumstantial evidence of her motive to later kill her father. *See Jones v. State***,** No. 10-13-00142-CR, 2014 Tex. App. LEXIS 7739, at *7 (Tex. App.—Waco July 17, 2014, no pet.) (mem. op., not designated for publication) (finding that the probative force of the evidence favored admissibility because it indicated Jones's

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CODE CRIM. PROC. ANN. art. 38.36(a) (West 2018). Evidence admitted under this statute remains subject to rules of evidence 403 and 404(b), however. *Smith v. State*, 5 S.W.3d 673, 679 (Tex. Crim. App. 1999).

hostility or ill will towards the decedent). Furthermore, the statements were not cumulative of other evidence found of record.[3]

We further note that the witnesses were two of eleven who testified. Their testimony filled only 34 pages of the 650 pages of reporter's record memorializing the State's case-in-chief. Nor was the testimony confusing or unduly distracting.

Rule 403 "envisions exclusion of [relevant] evidence only when there is a 'clear disparity between the degree of prejudice of the offered evidence and its probative value.'" *Hammer v. State*, 296 S.W.3d 555, 568 (Tex. Crim. App. 2009) (quoting *Conner v. State*, 67 S.W.3d 192, 202 (Tex. Crim. App. 2001)). The trial court found no clear disparity; neither do we. Thus, the former did not abuse its discretion when admitting the testimony of both witnesses.

Issue Six – Buck's Recorded Statement

In her sixth issue, appellant complains of the trial court's decision to bar her from admitting the entire 6.5 hour interview of Benjamin Buck, a witness for the State. Buck was interviewed by investigating officers about appellant, her husband, and the decedent. It is the transcription of that long interview she wanted admitted under Texas Rules of Evidence 107 and 612. The State objected, contending that it was hearsay. The objection was sustained. We overrule the issue.

Texas Rule of Evidence 612 concerns writings used to refresh a witness's memory and the options available to an adverse party when a writing is so used. Appellant makes no effort to explain in her appellate brief why that rule applies, other than to simply suggest that her counsel meant "in reality" to say the recording was admissible as "past

[3]Though appellant suggested that the State had succeeded in admitting other similar statements, she did not describe them or cite to their location in the record.

recollection recorded" under evidentiary rule 803(5). Moreover, aside from merely asserting the evidence consisted of "past recollection recorded," she said nothing else in effort to explain why it was admissible under 803(5). So, both her Rule 612 and 803(5) arguments were waived due to deficient briefing. *Royal v. State*, No. 07-19-00321-CR, 2020 Tex. App. LEXIS 5318, at *3–4 (Tex. App.—Amarillo July 14, 2020, no pet.) (mem. op., not designated for publication) (stating that briefing rules require an appellant to provide citation to legal authority and both substantive analysis and references to the record supporting the issue urged and failing to do that results in waiving the argument).

As for Rule 107, it permits an adverse party to introduce a writing or recorded statement when his opponent "introduces part of . . . [a] writing[] or recorded statement." TEX. R. EVID. 107. Yet, the part sought to be introduced must be "necessary to explain or allow the trier of fact to fully understand the part offered by the opponent." *Id.* Why the ***entire*** 6.5 hour statement of Buck to the investigator was "necessary to explain or allow the trier of fact to fully understand" aspects of the interview introduced by the State was not explained. Apparently, portions of the interview contained information contradicting statements Buck made at trial, and appellant thought it useful as a means of impeaching his credibility. Yet, she did not try to impeach Buck with those portions of the interview when he testified. Nor did she inform the trial court (or us) of any specific part of the recording which would have impeached him. Instead, she waited until the investigating officer testified to offer the entire recording into evidence under Rule 107. Without her explaining why or how Rule 107 made the entire recording admissible and accompanying such substantive explanation with citation to authority, we conclude that this aspect of the issue was also inadequately briefed and waived.

Issue Seven – Charge Error

In her seventh and final issue, appellant contends the trial court erred by submitting a charge that included an instruction about her liability as a primary actor, as opposed to merely a party. The evidence allegedly was insufficient to support such an instruction. Yet, he also concedes that precedent allows the inclusion of disjunctive charges, like those accusing a defendant as being the primary actor or a party to the offense. We overrule the issue.

Appellant cites no authority for the proposition that a trial court may only submit a party charge when the evidence does not indicate that the accused was the primary actor. *See Reyes v. State*, 741 S.W.2d 414, 424 (Tex. Crim. App. 1987) (recognizing long ago that the accused is charged and held to answer for doing the criminal act himself, as the primary actor and may also be charged as a party if the evidence supports an instruction on same). Nevertheless, we assume *arguendo* that such may be true for purposes of addressing his last issue. In our so assuming it to be true, it would follow that she had to also illustrate why the evidence was insufficient to support her conviction as the primary actor as a condition to showing error. Yet, no attempt was made to do that. Thus, the issue was again inadequately briefed and, therefore, waived.

Having overruled each issue, we affirm the judgment of the trial court.

Per Curiam

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